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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,947	08/10/2006	Gerhard Kurz	095309.57327US	3065

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EXAMINER
LI, CE LI

ART UNIT	PAPER NUMBER
3661	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/566,947	KURZ ET AL.	
	Examiner	Art Unit	
	CE LI	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 March 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *1-10 and 17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-16, 18--20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 February 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 11 and 18 have been amended. Claims 1-10 and 17 are cancelled. Claims 1-16 and 18-20 are pending.

Response to Arguments

2. Applicant's arguments, see page 1 of Remarks, filed 03/20/2009, with respect to the rejection(s) of claim(s) 17 and 18 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of new art.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 11, 12, 14 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagele et al (US 5,123,301) in view of Asada et al. (US 6,434,471)

Hagele discloses a method for changing the acceleration mode (Abstract) of a motor vehicle, wherein the acceleration mode can be changed by the driver between a normal acceleration mode and a rapid acceleration mode in which the supply of air and fuel is increased, comprising comprising:

As to claim 11, changing from the normal acceleration mode into the rapid acceleration mode if a pedal-speed threshold value is exceeded when an accelerator pedal is activated (Abstract).

As to claim 12, wherein the changing from the normal acceleration mode into the rapid acceleration mode is independent of a current pedal position of the accelerator pedal between a neutral home position and a maximum activation position (col. 5, lines 62-67).

As to claim 14, wherein acceleration in the rapid acceleration mode takes place with maximum engine drive torque (col. 2, lines 1-2).

As to claim 19, wherein the acceleration mode is changed over from the rapid acceleration mode into the normal acceleration mode when the pedal position is returned in a neutral home position direction (col. 6, lines 12-17).

Hagele fails to teach a surroundings sensor system to sense a relative distance from a vehicle traveling in front of the motor vehicle.

As to claims 11 and 18, Asada teaches sensing ambient states using a surroundings sensor system (vehicle spacing sensor 1), and when values that are critical for safety are reached (col. 8, lines 34-42), wherein the sensing includes sensing a relative distance (vehicle spacing sensor 1), from a vehicle traveling in front of the

motor vehicle (col. 8, lines 34-42), is sensed, the vehicle speed control section limits the acceleration to the maximum level of 0.06 (col. 8, lines 43-52), one having ordinary skill in the art at the time of invention would be obvious to know that when the acceleration is limited, which means rapid acceleration is disable, and the change from normal acceleration mode into the rapid acceleration mode is prevented. If rapid acceleration is not prevented, then the speed of the vehicle would increase rapidly and exceed the speed of preceding vehicle in a small amount of time. When the vehicle spacing is changed from far to near, and the following vehicle with a much faster speed due to rapid acceleration than the preceding vehicle, collision would easily occur.

Therefore, given the teaching of Asada, it would have been obvious to one having ordinary skill in the art at the time of invention to provide Hagele's method with a surroundings sensor system and limiting acceleration when the vehicle spacing is less than safety distance, as taught by Asada, to prevent car collision and ensure safer driving.

5. Claims 11, 13, 15-16, 18, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polly (US 5,113,721) in view of Asada et al. (US 6,434,471).

Polly discloses a method for changing the acceleration mode (col. 5, lines 33-43) of a motor vehicle, wherein the acceleration mode can be changed by the driver between a normal acceleration mode and a rapid acceleration mode in which the supply of air and fuel is increased, comprising:

As to claim 11, changing from the normal acceleration mode into the rapid acceleration mode if a pedal-speed threshold value is exceeded when an accelerator pedal is activated (col. 5, lines 33-43).

As to claim 13, wherein the changing from the normal acceleration mode into the rapid acceleration mode is carried out only when a pedal position of the accelerator pedal exceeds a switch-on threshold value (col. 17, lines 32-36).

As to claim 15, classifying driver type such that a criteria for the changing between the normal acceleration mode and the rapid acceleration mode are determined as a function of the drive type (col. 1, lines 60-64).

As to claim 16, wherein the classifying is carried out automatically by measurable driver reactions (col. 1, lines 57-64).

As to claim 20, when the acceleration mode changes, the engine drive torque in accordance with a predefined function of times (figure 3, pedal position is a function of time and engine torque is a function of pedal position).

Polly fails to teach a surroundings sensor system to sense a relative distance from a vehicle traveling in front of the motor vehicle.

As to claims 11 and 18, Asada teaches sensing ambient states using a surroundings sensor system (vehicle spacing sensor 1), and when values that are critical for safety are reached (col. 8, lines 34-42), wherein the sensing includes sensing a relative distance (vehicle spacing sensor 1), from a vehicle traveling in front of the motor vehicle (col. 8, lines 34-42), is sensed, the vehicle speed control section limits the acceleration to the maximum level of 0.06 (col. 8, lines 43-52), one having ordinary skill

in the art at the time of invention would be obvious to know that when the acceleration is limited, which means rapid acceleration is disable, and the change from normal acceleration mode into the rapid acceleration mode is prevented. If rapid acceleration is not prevented, then the speed of the vehicle would increase rapidly and exceed the speed of preceding vehicle in a small amount of time. When the vehicle spacing is changed from far to near, and the following vehicle with a much faster speed due to rapid acceleration than the preceding vehicle, collision would easily occur.

Therefore, given the teaching of Asada, it would have been obvious to one having ordinary skill in the art at the time of invention to provide Polly's method with a surroundings sensor system and limiting acceleration when the vehicle spacing is less than safety distance, as taught by Asada, to prevent car collision and ensure safer driving.

Prior Art Made of Record

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Kajiwara (US 5,432,509) discloses a method to use distant sensor to measure the distance between vehicles and warn driver to take safe action.

b. Flinspach et al. (US 6,199,536) discloses a method to trigger change of the throttle valve position when a speed of a gas pedal of the vehicle is above a threshold value.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CE LI whose telephone number is (571)270-5564. The examiner can normally be reached on Monday to Friday, 9AM-5PM, EST, every other Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (571)272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CE LI/
Examiner, Art Unit 3661

/Thomas G. Black/
Supervisory Patent Examiner, Art Unit 3661